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No. 02-1624

IN THE

Supreme Court of the United States

ELK GROVE UNIFIED SCHOOL DISTRICT
and DAVID W. GORDON, Superintendent,

Petitioners,

v.

MICHAEL NEWDOW,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

MOTION OF THE AMERICAN CIVIL RIGHTS UNION TO FILE AN AMICUS CURIAE BRIEF AND BRIEF AMICUS CURIAE IN SUPPORT OF THE PETITIONERS

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MOTION OF THE AMERICAN CIVIL RIGHTS UNION TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF THE PETITIONERS

Now comes the Amicus, the American Civil Rights Union (ACRU), by its counsel, John C. Armor, Esq, and says:

1. The background of the ACRU and its interest in this case are as described in the attached Amicus Curiae Brief at page 1, and are incorporated herein with full force and effect.

2. Pursuant to the Rules of the Supreme Court, counsel for the ACRU has contacted counsel for the Petitioners, counsel for the Respondents, and the Solicitor General's Office. All have indicated that they have no objection to its filing.

3. As of the time this Brief must be printed, those consents are not yet in hand in written form. Counsel feels certain they have been mailed; however, mail deliveries are routinely slow to Highlands, NC, (population 1,000).

4. Therefore, a Motion to accept this Brief is in order.

WHEREFORE, the ACRU moves this Court to accept the attached Amicus Curiae Brief for consideration in the above case.

Respectfully submitted,

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INTEREST OF AMICUS*

The American Civil Rights Union (ACRU) was established in 1998 as a Section 501(c)(3) educational and legal charity dedicated to basic constitutional issues. Its purpose, as stated on its Internet webpage, is to advance civil rights because "Civil rights are the fundamental liberties that all Americans should enjoy as a matter of basic morality, as well as constitutional protection."

The Policy Board of the ACRU consists of: Hon. Robert B. Carleson, Chairman; Hon. Edwin Meese, III; Judge Robert Bork; Hon. Linda Chavez (Emerita); Mr. Joseph Perkins; Hon. William Bradford Reynolds; Professor James Q. Wilson; Ambassador Curtin Winsor, Jr.; Dean J. Clayburn LaForce; Professor Walter Williams; and Hon. Ken Tomlinson (Emeritus).

The interest of the ACRU in this case is primarily the First Amendment freedom of religion rights of both individuals and private organizations, which are affected by this decision concerning the Pledge of Allegiance. The ACRU is also concerned with the trend in federal court decisions that would turn the Constitution into an enemy of American history, including the history of the writing of the Constitution and other founding documents of the nation.

Lastly, this case concerns the First Amendment, and most of the briefs filed by the ACRU in all courts have been on basic First Amendment issues.

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* This *amicus curiae* brief filed in support of the Petitioners was funded solely by the ACRU and is authored entirely by counsel for the ACRU. Letters of consent from the parties are being lodged herewith.

SUMMARY OF ARGUMENT

This Court entered an Order in this case, stating the two issues it expects parties and *amici* to address. The ACRU addresses both issues as the first order of argument.

The first issue that the ACRU will address concerns the legal capacity of the Petitioner to bring this case in the first instance. In the view of the ACRU, there are serious doubts about Mr. Newdow's legal rights to bring the case. Nonetheless, for the reasons stated, this *amicus* urges the Court to keep this case and decide it now.

The second issue the ACRU deals with is the interpretation of the First Amendment's guarantee of religious freedom. In the view of the ACRU, the lower court's interpretation is at odds with the history of the United States, the history of the drafting and adoption of its founding documents, and the plain language of the First Amendment itself. Therefore, this *amicus* urges this Court to reverse the lower court on this issue.

The third issue that the ACRU will address was not requested by this Court, but necessarily flows from the second issue the Court did pose. Were this Court to agree with the First Amendment analysis presented by the lower court, its decision would have ramifications in many other areas where the word "God" appears in official documents. These consequences should, in the view of the ACRU, be considered by this Court in deciding this case.

I. Does the Respondent have standing to challenge the Pledge of Allegiance on the facts of this case?

As this *amicus* understands the facts of this case, the Petitioner, Mr. Newdow, did not have either legal or actual custody of his daughter when he initiated this case. The ACRU further understands that neither his daughter's mother, who did have custody, nor his daughter (to the extent that her conclusions might be admissible in this case) accepted or agreed with the position which he took in his daughter's name in this case.

The ACRU further understands that after this case was completed in the lower court, Mr. Newdow did receive from the appropriate court in California the designation of co-custody of his daughter, with his former wife. This *amicus* expresses no opinion on whether a potential jurisdictional defect in the original trial can be cured by an action taken after that trial was completed.

Instead, the ACRU addresses the question of judicial economy, should this case be fully briefed and argued but then dismissed for want of jurisdiction, with instruction to the trial court to dismiss it on remand. This Court is certainly aware of the extensive interest in and discussion of this case in legal and popular periodicals, as well as the long line of other challenges to "religious" statements, objects, documents, etc., which are in various stages in various lower courts.

There should be no doubt that if this case is dismissed without decision, another test case on the same issue will be brought somewhere in the country, and in about three years that case will arrive in this Court for determination. In the

meantime, school districts across the nation will be bereft of clear direction from this Court on the Pledge of Allegiance, which is commonly used in their classrooms. And lower courts, both state and federal, will be bereft of clear guidance from this Court as they deal with cases both related to and squarely on point to the instant case.

The ACRU directs the attention of this Court to a long line of cases, most concerning either abortion or elections, in which the Court decided the cases before it even though they could have been dismissed as moot, on the grounds that the issues were "certain to arise again" and that decisions of the Court were called for. A prime example is *Anderson v. Celebrezze*, 460 U.S. 780 (1983). That was an important decision by the Court which has had continuing importance in election law litigation to this day. However, the Court's decision was rendered in 1983, concerning an election which was conducted and completed back in 1980.

The ACRU recognizes that there are substantial differences between the question of mootness and the question of jurisdiction. Still, the same logic in favor of deciding the case now, rather than rejecting the instant case and waiting for another case on the same issue to arise, applies here. Therefore, this *amicus* urges this Court to exercise every indulgence in favor of jurisdiction in the instant case, so it can be decided now as a matter of judicial economy.

II. Is the Pledge of Allegiance unconstitutional because of its inclusion of the words, "under God"?

The Respondents in this case, most of the other *amici* who support their position, and probably the Solicitor General on behalf of the United States (who has been authorized to take part in this case) will present numerous quotations from the "founders." These will include those who wrote the Constitution and those who took part in the writing and ratification of the First Amendment, concerning their religious beliefs and the compatibility of those beliefs with the founding of the United States, and its legal history. The ACRU will present only two such quotes:

> Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity. . . . And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.
>
> It is substantially true that virtue or morality is a necessary spring of popular government. The rule, indeed, extends with more or less force to every

species of free government. Who that is a sincere friend to it can look with indifference upon attempts to shake the foundation of the fabric? George Washington, *Farewell Address to the People of the United States*, September 26, 1796, The Avalon Project of Yale Law School, www.yale.edu/lawweb/avalon/washing.htm

We have no government armed with power capable of contending with human passions unbridled by morality and religion. Avarice, ambition, revenge, or gallantry, would break the strongest cords of our Constitution as a whale goes through a net. Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other. John Adams, Oct.11, 1798, Letter to the Massachusetts Militia, *The Works of John Adams, Second President of the United States*, Charles Francis Adams, editor.

There are entire books available on the religious and moral writings of the Framers, and their clear view that religion in general, as opposed to the religious beliefs of any given sect, was an essential part of public life in the United States. There should be no doubt among the Justices that almost all of the thousands of people who took part in the framing of the Constitution were believers in various religions in the Judeo-Christian tradition.

Referring to "thousands" includes the 55 who attended the Convention in Philadelphia, the thousand or so who took part in the ratification conventions for the Constitution, and the thousand or so who were members of the state legislatures

when the First Amendment was ratified. It was, of course, the ratification process which gave rise to the Bill of Rights. Many of the state ratifying conventions demanded addition of a Bill of Rights as a condition of their support for the Constitution.

Over 200 such amendments were requested. These were given to James Madison, then a newly-elected Congressman from Virginia, who distilled them into 17 amendments which passed the House. Of these, 12 amendments were passed by the Senate and sent out for ratification. (What is now the First Amendment was then the Third Amendment.) Ten of these Amendments were immediately ratified, and became known as the Bill of Rights. The original First Amendment became a dead letter by operation of demographics; it would have set congressional districts at 40,000 residents each. The original Second Amendment, the last work from the hand of James Madison to become part of the Constitution, was not finally ratified until 1992.

A complete history of the ratifying process appears in the Introduction to the facsimile reprint of Robert Yates' *Secret Proceedings and Debates of the Convention to Form the US Constitution*, Linn-Henley Research Center, Birmingham Public Library, Birmingham, Alabama, 1987; Introduction, at pages 17-18. As that history makes abundantly clear, the Constitution was only narrowly approved, ratification passing by 30-27 and 89-79 respectively in the two key states of New York and Virginia. The political price paid by the Federalists to obtain sufficient support from some of the Anti-Federalists was the commitment to draft and adopt the Bill of Rights.

The ACRU now turns to the specific language of the most basic and broad of the Bill of Rights, the First Amendment. It prohibits the "establishment of religion" and guarantees "the free exercise thereof." The historical record indicates two clear purposes: One was to prevent the United States from ever adopting an official or "established" religion. History shows that many of those who became colonists in America were driven by religious persecution against them by the established religions in the European nations of their birth. Nor was religious discrimination unknown in the American colonies. Rhode Island was established by Roger Williams, who was driven out of the Massachusetts colony because of his specific religious beliefs.

The first "Act of Toleration" was passed in the Maryland colony in 1649. Maryland was the only one of the original colonies which was founded by Catholics, who were not known in Europe as especially tolerant people either in governments or in civil life. It is noteworthy that of the three achievements Thomas Jefferson requested for his epitaph, the second was that he was the "Author . . . of the Statute of Virginia for Religious Freedom." Jefferson chose not to include the fact that he had served as President of the United States.

The first purpose of the First Amendment's protection of religious freedom is at issue in this case. It says, "Congress shall make no law . . . prohibiting the free exercise thereof [of religion]. . . ." Two of the other three great rights in the First Amendment also use the word "of." It refers to "freedom *of* speech," and to "freedom *of* the press." [Emphasis added.]

The Framers were by no means careless in their use of language. Freedom "of" religion is not the same thing as

freedom "from" religion. That distinction gets to the heart of this case. Has it been the policy of the United States to encourage religious and moral beliefs among its citizens since the very beginning? Absolutely yes. Witness the Northwest Ordinance in which the purpose of the schools in the territory, which would eventually become up to five new states, was not only the dissemination of knowledge but also of religion.

As part of the basic law in the territory, the Ordinance provided that, "Art. 3. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Northwest Ordinance; July 13, 1787. Many of the same Framers who would write or ratify the Constitution, or would write or ratify the First Amendment, were Members of the Congress which wrote this Ordinance.

However, with respect to anyone whose views were like that of the Petitioner, who proclaims himself an atheist, there was to be no discrimination. Article VI, Clause 3, of the Constitution states that all public officials, both state and federal, "shall be bound by Oath or Affirmation, to support this Constitution, but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." In short, what anyone believed — accepting the views of any particular religious sect, or rejecting any and all such beliefs — was immaterial to the right to run for or hold any public position.

This clause of the Constitution confirms Benjamin Franklin's conclusion that in the United States we have in common a "secular religion," which is our Constitution. The very language of this clause shows that atheists or agnostics were included. An "oath" at the time meant a

commitment based on religion; an "affirmation" meant a personal pledge, not based on any religious beliefs.

Non-discrimination on religion with respect to candidates necessarily meant the same with respect to voters. Because of differences in the election laws and philosophies of the states, the Constitutional Convention made the decision not to establish any national election law, but instead left that matter to the several states. Witness Article I, Section 2, which states that "the Electors [meaning voters] in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." Common to the election laws of all states was the provision that no one could be a candidate for public office, state or federal, without also being qualified as an Elector [or voter]. So, by the combination of commands in the Constitution and the operation of the various state election laws, the requirement of religious non-discrimination also applied to the citizens who could vote for Members of Congress.

The distinction between the absolute prohibition of any established national religion, and personal beliefs and references to the fact that the United States has been a "God-fearing nation" throughout its history, including today, is demonstrated by extended quotes from the correspondence between the Danbury Baptist Association and President Thomas Jefferson, which this Court used as a basis for the *Everson v. Bd. of Education*, 330 U.S. 1 (1947) decision injecting into the Constitution a phrase which it nowhere used: the "wall of separation between church and state."

Here is what the Danbury Baptist Association wrote to President Thomas Jefferson on 7 October, 1801:

> Our Sentiments are uniformly on the side of Religious Liberty — That Religion is at all times and places a Matter between God and Individuals — That no man ought to suffer in Name, person or effects on account of his religious Opinions — That the legitimate Power of civil Government extends no further than to punish the man who works ill to his neighbour: But Sir our constitution of government is not specific. Our antient charter, together with the Laws made coincident therewith, were adopted as the Basis of our government at the time of our revolution; and such had been our laws & usages, & such still are; *that Religion is considered as the first object of Legislation*; & therefore what religious privileges we enjoy (as a minor part of the State) we enjoy as favors granted, and not as inalienable rights: and these favors we receive at the expense of such degrading acknowledgements, as are inconsistent with the rights of freemen. [Emphasis added; spelling and punctuation per the originals in both quotes.]

Here is the bulk of President Jefferson's reply to the Baptist Association on 1 January, 1802:

> Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinions, I contemplate with sovereign reverence that act of the whole

American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between Church & State. adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.

I reciprocate your kind prayers for the protection & blessing of the common father and creator of man, and tender you for yourselves and your religious association, assurances of my high respect & esteem.

Both the Baptists' letter to Jefferson and his reply make clear their agreement that religion plays a principal role in public affairs, and that references to God (or "father and creator") are entirely appropriate in public communications. The question raised by the Baptists was whether the federal government might impose upon them as an organized church, not as individuals. And Jefferson's reply assured them that it would not do that. Nothing in Jefferson's letter attempts to, or does, change the definition of "establishment of religion" from its meaning when the First Amendment was written: the creation of a single, preferred, national religion, to the exclusion of all others.

Jefferson's choice of words leads to the same conclusion. His correspondents were concerned with possible impact of federal actions on their Baptist Church. Jefferson's reply does

not refer to separation of religion in general, or morality, but of "church," meaning an organization of believers in specific religious tenets — like the Danbury Baptist Association, for instance.

The American Civil Rights Union urges this Court to reject the view of the lower court that a mention of "God" in a public place or public document somehow amounts to an "establishment of religion." If it means that, an obvious question arises: "What religion is being established?" Every religion involves a belief in "God," or a "Supreme Being" of some kind. That is the basic definition of "religion" of any and all types.

This concept that the word "God" alone is offensive cannot be fitted under the ambit of "establishment of religion" without doing serious violence to the meaning of that phrase. "Establishment" means a government setting up a *particular* religion, or sect, in a preferred status to all others. This meaning is illuminated by the history of why people came to the colonies in America, why they prohibited established religions in many of their colonies, and why they ultimately insisted on the same prohibition in the Bill of Rights. To mention "God," a concept common to every religion that has ever existed, cannot by definition advance any *particular* religion over all others.

While it cannot be known at this time what organizations will file *amicus* briefs in support of the Respondents' position, it is likely that some of the larger atheist organizations will be among those. From reading the websites of many of these organizations, they usually claim that Thomas Paine, author of *Common Sense* and *The American Crisis*, was one of the "founders" who was an atheist.

Paine was a professed Christian when he wrote the seminally important *Common Sense*. But by the time he wrote *The Age of Reason*, he had rejected all organized religions.

But Paine was not an atheist. Here are his words from *The Age of Reason*:

> I believe in one God, and no more; and I hope for happiness beyond this life.
>
> I believe in the equality of man, and I believe that religious duties consist in doing justice, loving mercy, and endeavoring to make our fellow creatures happy. . . .
>
> I do not believe in the creed professed by the Jewish church, by the Roman church, by the Greek church, by the Turkish church, by the Protestant church, nor by any church that I know of. My own mind is my church. *The Age of Reason*, Foner, Editor, p. 666.

Paine's conclusion is similar to a statement of belief by Albert Einstein, two centuries later.

> A knowledge of the existence of something we cannot penetrate, our perceptions of the profoundest reason and the most radiant beauty, which only in their most primitive forms are accessible to our minds — it is this knowledge and this emotion that constitute true religiosity; in this sense, and in this alone, I am a deeply religious man. Albert Einstein, *The World as I See It*. Included in *Living Philosophies*, Simon and Schuster, New York, 1931, pps.3-7.

Later in this same short essay, Einstein explains what he means by the "cosmic religious feeling." He writes:

> His [the scientist's] religious feeling takes the form of a rapturous amazement at the harmony of natural law, which reveals an intelligence of such superiority that, compared with it, all the systematic thinking and acting of human beings is an utterly insignificant reflection. This feeling is the guiding principle of his life and work, ... It is beyond question closely akin to that which has possessed the religious geniuses of all ages.

This is not a digression from the argument. Instead, it is included to show how broad is the reach of the simple concept of "God." It can reach even those who believe in no tenets, who reject sacraments, clergy and churches, but who believe in something/someone who is the Prime Mover, the First Cause. For this Court to conclude that a reference as broad and aggressively non-sectarian as this one is prohibited, is to turn the Establishment Clause upside down. It is to establish the "religion" of atheism as the national religion of the United States. Legally and historically, that would be a wrong and destructive decision by this Court.

The last point is suggested in this Court's phraseology of the second question to be addressed. It refers to "willing participants" reciting the Pledge of Allegiance. This is an obvious reference to the Court's decision in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943). There, the Court recognized the protected right of students

who were Jehovah's Witnesses, and who had a religious objection to making an oath to anyone except God.

But the Court's protection of those students (and their parents) who had a principled objection to making the Pledge of Allegiance was not restricted to Jehovah's Witnesses. What the Court said there can easily be applied to Mr. Newdow's daughter (if in fact she shares her father's views, a question that is apparently debatable). Given the protection afforded by the *Barnette* case, the conclusion of this case should be clear; "willing participants" should be allowed to recite the entire Pledge without offense to the First Amendment.

In fact, if the lower court's approach were applied to the entire Pledge of Allegiance, that all parts offensive to significant numbers of people on grounds of their beliefs should be removed, this is all that would remain of the Pledge:

> I pledge allegiance to the flag of the . . . . and to the Republic for which it stands. . . .

As the Court knows from driving to and from their Chambers, the residents of the District of Columbia have put "No taxation without representation" on their license plates because they object to not being a state, and not being united with the other states. Many other citizens object to the "indivisible" claim. Still others object to the claim of "liberty and justice for all." Even the first two words, "I pledge," only survives because of the *Barnette* exception.

Besides, the Pledge is not a statement of objective reality. It is a statement of goals, of hopes for the future. And it, or any similar statement, is not long for this world if the constitutional standard is "freedom from being offended."

That seems to be what both the Respondents and the lower court had in mind.

The ACRU urges this Court to conclude that there is no violation of the First Amendment by the inclusion of the phrase, "under God," in the Pledge of Allegiance. Therefore, this Court should reverse the lower court decision.

III. What consequences necessarily follow, should this Court accept the view of the First Amendment and the Fourteenth Amendment reached by the court below?

If a simple reference to "God" should be found to be a violation of the First Amendment, certain conclusions follow. To be consistent, this Court should order the rechiseling of the statuary on the East Pediment of its own building. The central figure there is Moses, holding the Ten Commandments. This Court should order the sanding down of certain religious images on the walls of its own chamber. Moses and the Ten Commandments are referenced there, too.

Also within the Court itself, it should instruct its Clerk to cease beginning its sessions with the statement, ". . . God save the United States and this Honorable Court. . . ."

The expurgation of "God" from public places should surely extend to ordering the removal of the motto, "In God we trust" from the coins and bills produced by the U.S. Treasury. This Court should revisit its own decision, upholding the payment of Chaplains with public money, and their use to give prayers at the opening of all legislative sessions, both state and federal. This effort should extend to instructing Congress that "The Star-Spangled Banner"

can no longer be recognized as the National Anthem of the United States — at least not without either rewriting or eliminating its fourth stanza. That stanza is the first public statement known to the ACRU of the motto of the United States. It includes this line, "And this be our motto: 'In God is our trust.'"

Lastly, as the Court knows, the founding documents of the United States all contain various references to "God." To be consistent, this Court should order the National Archives to place "modesty ribbons," like those used by network television when reporting on certain photographs, over certain passages in those documents that are on display to the unsuspecting public. Otherwise, there is a risk that a visitor who came in the door of the Archives as a committed atheist might be converted into a hard-shell Baptist just from the reading of such words as "Creator" and "Lord" in those documents.

The logic of the lower court is that no official statement of the government should mention the word "God." The Pledge of Allegiance is an official statement, promulgated by Congress by law; so is the text of the National Anthem. But if this Court accepts that logic, it cannot stop with laws passed by Congress. It should also apply to official statements by Presidents of the United States.

From the first Administration of George Washington to the current Administration of George W. Bush, Presidents have routinely included references to "God" or to "prayer" (which necessarily implies "God" as the recipient). This is especially true in times of crisis such as the declaration of war or the conduct of war. Typical is this quote from President Franklin D. Roosevelt to Congress on 8 December, 1941,

asking it to declare war against Japan: "With confidence in our armed forces — with the unbounding determination of our people — we will gain the inevitable triumph — so help us God." By the logic of the lower court, all official statements by Presidents, as opposed to their personal or campaign statements which are protected as "free speech," should also be expurgated of references to "God."

Should this Court follow the lower court's logic and order that all Presidents, now and in the future, cease making references to "God" in their official statements, the ACRU submits that the results would be adverse to the Court, not to the Presidents. It is highly likely that the Presidents would continue making such references, and the Opinion of this Court would simply be ignored.

The ACRU submits that the consequences of this Court's decision are far broader than merely the Pledge of Allegiance, even though that alone would reach millions of schoolchildren for generations to come. The consequences would reach almost all citizens in all generations to come. And it might well generate a rebellion of the legislative branch against the judicial branch. Should this Court order the removal of "In God we trust" from the money of the United States, it is likely that Congress would instruct the Treasury Department to ignore the Order of this Court.

This Court recognizes, as it is considering this case, that it is drawing a line concerning public references to an historical fact, that the United States is now and always has been composed predominantly of citizens who believe in God, whatever the sectarian principles they hold or however they worship Him (Her, or It). This Court need not draw such a line. At such time as the citizens of the United States cease

to hold such views, they are entirely capable of amending the Constitution under Article V to require an end to such public references to God.

Depending on what it concludes and how far it goes, this Court would be risking its own institutional suasion and respect, if it accepted the First Amendment views espoused by the lower court in this case. The ACRU suggests that this Court, if it affirmed the lower court here, would be headed down a path that denies the plain history of the United States, damages its Constitution, and ultimately damages the Court itself. Not only is this contrary to the history of the nation and of its Constitution, this would be contrary to the history of the Court.

CONCLUSION

The ACRU presented three basic arguments in this brief. First, that despite serious doubts about the jurisdiction of the trial court from the beginning, these should be resolved in favor of continued jurisdiction so this case can be decided now.

Second, a correct reading of the First Amendment, including the history of the British colonies in North America and the writing of the Constitution and the Bill of Rights, should lead to the conclusion that the Establishment Clause does not prohibit the use of the phrase "under God" in a public document or place in the United States.

Third, if the conclusions of the lower court were to be accepted by this Court, many other areas of American life would be affected negatively, over and above the Pledge of Allegiance, with consequences that could be as adverse as damage to the Court itself as an institution.

Wherefore, for the reasons above stated, the American Civil Rights Union urges this Court to reject the interpretation of the First Amendment reached by the lower court, and instead apply the consistent meaning of that Amendment from the time it was written and adopted to the present day. The lower court decision should be reversed.

Respectfully submitted,

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